IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10930 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LIYAKATMIYA AMINMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10930 of 2004

MR MR PRAJAPATI FOR MS SUBHADRA G PATEL for Petitioner

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by District Magistrate, Anand on 4th August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 [PASA Act for short]. The petitioner is under detention as bootlegger from 4th August, 2004.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration three criminal cases registered against the petitioner under the Bombay Prohibition Act. Out of these three offences, first offence came to be registered before Nadiad Police Station on 12th March, 2004, second offence came to be registered before Prohibition Police Station, Petlad on 27th April, 2004, while third offence came to be registered before Petlad Town Police Station on 27th June, 2004. In the first offence, the petitioner was found in possession of 36 bottles of foreign liquor, in second case, he was found in possession of 59 bottles of foreign liquor and in third case, he was found in possession of three bottles of foreign liquor. The detaining authority thoroughly examined the investigation papers in all the three above crimes registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. In view of the detaining authority, liquor is injurious to the public health and dangerous to human life. In view of the detaining authority, if the petitioner is kept free, the petitioner was likely to continue his illegal activities in dealing with liquor. The detaining authority came to the conclusion that the activities, therefore, of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority after considering other alternative available against the petitioner that to prevent the illegal activities of the petitioner forthwith, his detention under PASA Act was absolutely necessary. The detaining authority, therefore, passed the order of detention against the petitioner, which is under challenge in this petition.

3. Learned advocate Mr.M.R.Prajapati for learned advocate Ms.S. G. Patel for the petitioner and learned AGP Mrs.H.B.Punani, for the respondent No.3 were heard at length.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was

credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner the public order was disturbed and public health was adversely affected.

5. To arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In this exercise, the detaining authority must draw a line between the cases falling under "breach of law and order" and breach of public order. The fall out, reach and impact of the activities of the petitioner determines whether potentiality of the activities alleged was capable of disturbing the public order. When reach and impact of the activities are so grave, as to affect larger section of society and when widespread danger to life, property or the public health is likely, the activities can be branded as activity affecting the public order. The other cases are cases falling within the scope of breach of law and order, and can be taken care of by the general law. Referring to the two cases under the Prohibition Act filed against the petitioner, and going through the investigating papers, it appears that those cases came to be filed against the petitioner because he was found in possession of some prohibited country liquor in breach of Prohibition Act. Those cases are pending and the petitioner shall be tried and may be punished as well, if found guilty, but it is clear that through the investigating papers, which is the basic material, on which the detaining authority has placed reliance and has formed opinion, do not disclose the impact of activities of the petitioner disturbing the larger section of the society. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the petitioner will be dealt with according to law. Therefore, the act constituting criminal offences registered against the petitioner in dealing with country liquor, have no bearing at all on the question of maintenance of public order. In this view of the matter, the subjective satisfaction arrived at by the detaining authority based on the above material in respect of maintenance of public order is not legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed on this ground alone.

6. In the result, the petition is allowed. The order passed by the District Magistrate, Anand on 4th August, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner LIYAKATMIYA AMINMIYA MALEK is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. Direset service is permitted.

(J.R. Vora, J.)

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